



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 660**

**[Docket No. 211115-0231]**

**RIN 0648-BK56**

#### **Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Biennial Specifications; 2021-2022 and 2022-2023 Specifications for Pacific Mackerel**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing allowable catch levels including an overfishing limit, an allowable biological catch, and an annual catch limit for Pacific mackerel in the U.S. exclusive economic zone off the West Coast (California, Oregon and Washington) for the fishing seasons 2021-2022 and 2022-2023. This rule is finalized pursuant to the Coastal Pelagic Species Fishery Management Plan. The harvest guideline and annual catch target for the 2021-2022 fishing season are 8,323 metric tons (mt) and 7,323 mt, respectively. The harvest guideline and annual catch target for the 2022-2023 fishing season are 5,822 mt and 4,822 mt, respectively. If the fishery attains the annual catch target in either fishing season, the directed fishery will close, reserving the 1,000-mt difference between the harvest guideline and annual catch target as a set-aside for incidental landings and other sources of mortality. This rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

**DATES:** Effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**FOR FURTHER INFORMATION CONTACT:** Taylor Debevec, West Coast Region, NMFS, (562) 619-2052, *Taylor.Debevec@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, NMFS manages the Pacific mackerel fishery in the U.S. exclusive economic zone (EEZ) off the West Coast in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The CPS FMP and its implementing regulations require NMFS to set annual harvest specifications for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. The control rules in the CPS FMP include the harvest guideline (HG) control rule, which in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules, are used to manage harvest levels for Pacific mackerel. According to the FMP, the quota for the principal commercial fishery, the HG, is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The biomass estimate is an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. More information on the Pacific Fishery Management Council's (Council) process for developing Pacific mackerel harvest specifications and more detail on the HG control rule are provided in the proposed rule for this action (86 FR 48969; September 1, 2021) and are not repeated here.

The purpose of this final rule is to implement these harvest specifications, which include allowable harvest levels (*i.e.*, annual catch target (ACT) and HG), an annual catch limit (ACL), and annual catch reference points (*i.e.*, OFL and ABC). The uncertainty surrounding the current biomass estimates for Pacific mackerel for the 2021-2022 and 2022-2023 fishing seasons was taken into consideration in the development of these harvest specifications. The Pacific mackerel fishing season runs from July 1 to

June 30. Any Pacific mackerel harvested between July 1, 2021, and the effective date of the final rule would count toward the 2021-2022 ACT and HG.

The Council has recommended, and NMFS is implementing, Pacific mackerel harvest specifications for both the 2021-2022 and 2022-2023 fishing seasons. For the 2021-2022 Pacific mackerel fishing season these include an OFL of 12,145 mt, an ABC and ACL of 9,446 mt, a HG of 8,323 mt, and an annual ACT of 7,323 mt. For the 2022-2023 Pacific mackerel fishing season these include an OFL of 9,644 mt, and ABC and ACL of 7,501 mt, a HG of 5,822 mt, and an ACT of 4,822 mt. These catch specifications are based on the control rules established in the CPS FMP and biomass estimates of 57,832 mt (2021-2022) and 45,925 mt (2022-2023). The biomass estimates are the result of a catch-only stock assessment the NMFS' Southwest Fisheries Science Center completed in June 2021. The Council's Science and Statistical Committee, and the Council approved this stock assessment and resulting biomass estimates as the best scientific information available for management for these two fishing years at the June 2021 Council meeting.

Under this action, in the unlikely event that catch reaches the ACT in either fishing season, directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set-aside for incidental landings in other fisheries and other sources of mortality.<sup>1</sup> For the remainder of the fishing season, incidental landings in CPS fisheries would be constrained to a 45-percent incidental catch allowance (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel); and in non-CPS fisheries, up to 3 mt of Pacific mackerel may be landed incidentally per fishing trip. The incidental set-aside is intended to allow continued operation of fisheries for other stocks, particularly other CPS stocks that may school with Pacific mackerel.

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<sup>1</sup> Directed fishing for live bait and minor directed fishing is allowed to continue during a closure of the directed fishery.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure of directed fishing (when harvest levels reach or exceed the ACT). Additionally, to ensure the regulated community is informed of any closure, NMFS will also make announcements through other means available, including email to fishermen, processors, and state fishery management agencies.

On September 1, 2021, NMFS published a proposed rule in the **Federal Register** (86 FR 48969) soliciting public comments through October 1, 2021. NMFS received two comments from private citizens, one supporting the proposed rule and the other suggesting lowering the catch limit to account for uncertainty. In response to the comment on uncertainty, NMFS has determined that scientific uncertainty has been adequately incorporated in this action through the stock assessment modeling and resulting biomass estimate, as well as in the catch limit by reducing the OFL to the ABC/ACL, to the HG, and finally the ACT. The incorporation of uncertainty and precautionary reductions in the catch limit are to prevent overfishing of mackerel. Additionally, NMFS notes that the Pacific mackerel fishery has been managed with annual or biennial stock assessments and precautionary catch levels for at least the last 20 years.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed

rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. There are no relevant Federal rules that may duplicate, overlap, or conflict with the final action.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 15, 2021.

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Samuel D. Rauch, III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

**PART 660--FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.511, revise paragraphs (i) and (j) to read as follows:

**§ 660.511 Catch restrictions.**

\* \* \* \* \*

(i) The following harvest specifications apply for Pacific mackerel:

(1) For the Pacific mackerel fishing season July 1, 2021, through June 30, 2022, the harvest guideline is 8,323 mt and the ACT is 7,323 mt; and

(2) For the Pacific mackerel fishing season July 1, 2022, through June 30, 2023, the harvest guideline is 5,822 mt and the ACT of 4,822 mt.

(j) When an ACT in paragraph (i) of this section has been reached or exceeded, then for the remainder of the Pacific mackerel fishing season, Pacific mackerel may not be targeted and landings of Pacific mackerel may not exceed: 45 percent of landings when Pacific mackerel are landed in CPS fisheries (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), or up to 3 mt of Pacific mackerel when landed in non-CPS fisheries. The NMFS West Coast Regional Administer shall announce in the **Federal Register** the date that an ACT is reached or exceeded, and the date and time that the restrictions described in this paragraph (j) go into effect.

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